

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

ORIGINAL

Revisions to Library Reference Rule

Docket No. RM98-2

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**COMMENTS OF THE
NEWSPAPER ASSOCIATION OF AMERICA
October 14, 1998**

The Newspaper Association of America ("NAA"), by its attorneys, hereby respectfully submits its comments regarding the Notice and Order on Proposed Revisions to Commission Rules on Library References.¹

NAA is a non-profit organization representing more than 1,700 newspapers in the United States and Canada. NAA is an active participant in many proceedings before the Commission and was one of the principal litigants regarding the status of library references in Docket No. R97-1.

For the reasons stated in its submissions in Docket No. R97-1, NAA takes as a basic proposition that the Commission may not, in a "hearing on the record" pursuant to 39 U.S.C. § 3624, rely upon unsponsored library references in rendering its recommendations. Such unsponsored materials are not "evidence" under the Commission's rules of practice, and should not be considered part of the "record." Accordingly, the Commission is well advised to ensure, as it did in Docket No. R97-1, that the Postal Service and intervenors provide attesting witnesses in support of

¹ Order No. 1219, 63 *Fed. Reg.* 47,456 (Sept. 8, 1998) ("Notice and Order").



materials filed as library references that may provide a factual or “evidentiary” basis for the decision.

As NAA reads the *Notice and Order* in this proceeding, the Commission is not asking interested parties to readdress this basic proposition. Indeed, the proposed amendments reiterate that designation as a library reference in and of itself confers no evidentiary status. Rather, the amendments seek to improve the rules in order to avoid a recurrence of the motion practice that consumed time and attention in Docket No. R97-1 and to reduce the possibility that parties may misuse the privilege of filing library references.

To that end, the Commission has proposed a number of revisions to section 31(b) of its rules of practice:

1. to improve the identification of materials filed as library references;
2. to establish criteria for library reference status; and
3. to require parties lodging library references to file a motion explaining the basis for that status.

NAA generally supports these proposals for the reasons described in the Commission's *Notice*.

First, the labeling and identification of library references could certainly be improved. At a minimum, library references filed in response to an interrogatory should identify the question, the witness to whom it was addressed, the sponsoring witness (if any), and provide a brief description of both what the document is, and what it contains. For example, the description should both indicate what the designated library reference is (e.g., a bound document of 28 pages, a text document with an accompanying Microsoft Word file containing 800 kilobits, an Excel file containing 1.2 Megabits, etc.)

as well as explain its contents. The proposed rule 31(b)(5) generally includes many of these matters. NAA encourages the Commission to modify the rule to include both a description of what the library reference is and a specific requirement that, when a library reference is filed in response to an interrogatory, the interrogatory be identified.

Second, establishing specific criteria for library reference status is in some ways a regrettable development. However, such criteria may now have become necessary in light of the ever-increasing size and complexity of omnibus rate proceedings. Given the vast number and size of library references filed by all parties in Docket No. R97-1, the proposed rules should provide guide parties as to how best to use the convenience offered by the library reference procedure.

Third, the proposal that parties move for library reference status deserves adoption, although possibly only on a trial basis. NAA supports this proposal with some reluctance due to a concern that this particular revision may give rise to excessive motion practice. NAA urges the Commission to monitor experience under this rule to determine whether it results in more, rather than less, motion practice, and with a view towards revisiting this aspect of the change in the future.


Finally, as with the current rule, the effectiveness of the rule in promoting the convenience of the parties and facilitating the conduct of these proceedings will depend upon how the rule is administered in the tumult of an omnibus rate or classification case. Notwithstanding the improvements in the proposed rules, NAA urges the Commission to continue to require that all data, cost studies, and econometric analyses on which the Commission is invited to rely, directly or indirectly, become part of the formal record by being sponsored by a witness.

With the understanding that the proposed amendment will not change the evidentiary status of unsponsored library references, but rather is intended to improve the manner in which library references are used, NAA supports the proposed amendment to the Commission's rules of practice, and urges its adoption.

Respectfully submitted,

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